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Letter dated 18 January 2010 from the Secretary-General addressed to the President of the Security Council

I have the honour to refer to my letter dated 2 October 2008 (S/2008/630), by which I informed the President of the Security Council that I would no longer provide reports to the Security Council on a regular basis following the termination of the mandate of the United Nations Mission in Ethiopia and Eritrea (UNMEE) as of 31 July 2008, in accordance with Security Council resolution 1827 (2008).

I would like to inform you that, further to the final report of the Eritrea-Ethiopia Boundary Commission, which I have transmitted to the Security Council, I have also received from the President of the Eritrea-Ethiopia Claims Commission his final report on the work of the Claims Commission, dated 20 November 2009 (see annex).

I would be most grateful if you could bring the present letter and its annex to the attention of the members of the Security Council.

(*Signed*) **BAN** Ki-moon

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Annex

Letter dated 20 November 2009 from the President of Eritrea-Ethiopia Claims Commission to the Secretary-General

I am writing to you on behalf of the Eritrea-Ethiopia Claims Commission, which was established by the Algiers Agreement between Eritrea and Ethiopia of 12 December 2000.

By that Agreement the Claims Commission was established

> "to decide through binding arbitration all claims for loss, damage or injury by one Government against the other, and by nationals (including both natural and juridical persons) of one party against the Government of the other party or entities owned or controlled by the other party that are (a) related to the conflict that was the subject of the Framework Agreement, the Modalities for its Implementation and the Cessation of Hostilities Agreement, and (b) result from violations of international humanitarian law, including the 1949 Geneva Conventions, or other violations of international law."

The Claims Commission rendered 15 partial and final awards on the liability aspects of the parties' claims between 2003 and 2005. With the issuance of its final awards on damages on the claims of both parties on 17 August 2009, the Claims Commission has now completed its mandate.

With reference to my report as President of the Claims Commission (report to the Secretary-General on the work of the Commission: February-May 2001), dated 7 June 2001, which was attached as annex II to the progress report of the Secretary-General on Ethiopia and Eritrea of 19 June 2001 (S/2001/608), I hereby enclose my final report on the work of the Claims Commission for inclusion in your next progress report to the Security Council on Eritrea and Ethiopia.

(*Signed*) Hans **van Houtte**
President
Eritrea-Ethiopia Claims Commission

Enclosure

Eritrea-Ethiopia Claims Commission

Final report to the Secretary-General on the work of the Commission

1. The Eritrea-Ethiopia Claims Commission (the "Commission") was established pursuant to article 5 of the Agreement signed in Algiers on 12 December 2000 between the Governments of the State of Eritrea and the Federal Democratic Republic of Ethiopia (the "December 2000 Agreement"). The mandate of the Commission is to:

> "decide through binding arbitration all claims for loss, damage or injury by one Government against the other, and by nationals (including both natural and juridical persons) of one party against the Government of the other party or entities owned or controlled by the other party that are (a) related to the conflict that was the subject of the Framework Agreement, the Modalities for its Implementation and the Cessation of Hostilities Agreement, and (b) result from violations of international humanitarian law, including the 1949 Geneva Conventions, or other violations of international law."

2. The members of the Commission are Professor Hans van Houtte (President), Judge George Aldrich (appointed by Ethiopia), Mr. John Crook (appointed by Eritrea), Dean James Paul (appointed by Ethiopia) and Ms. Lucy Reed (appointed by Eritrea).

3. Pursuant to the December 2000 Agreement, the Commission is an independent body. Its seat is in The Hague, although it has met informally with the parties elsewhere. The Permanent Court of Arbitration serves as registry to the Commission.

4. In December 2001, both parties filed their claims in compliance with the 12 December 2001 filing deadline established by article 5(8) of the December 2000 Agreement. Neither party made use of the possibility, created by chapter three of the Commission's rules of procedure, of filing claims utilizing possible mass claims procedures. State-to-State claims were filed on behalf of the Government of Ethiopia. The Government of Eritrea filed claims on its behalf, as well as on behalf of named individuals. The claims filed by the parties related to such matters as the conduct of military operations in the front zones, the treatment of prisoners of war and of civilians and their property, diplomatic immunities and the economic impact of certain government actions during the conflict.

5. After the claims were filed, the Commission analysed the initial filings and requested and received the parties' views regarding the priorities and sequence for its work. The Commission decided to bifurcate its work by dealing first with issues of liability and only subsequently with the determination of damages.

6. The Commission decided to begin with the two parties' claims alleging mistreatment of their respective prisoners of war, followed by their claims of misconduct related to the armed conflict in the central front, followed by their allegations of mistreatment of civilians on the home fronts, followed by the parties' remaining liability claims.

7. The Commission's hearings on the parties' prisoner-of-war claims took place at the Peace Palace in December 2002. The Commission rendered its partial awards on the parties' prisoner-of-war claims (Eritrea's claim 17 and Ethiopia's claim 4) on 1 July 2003.

8. The December 2000 Agreement calls for the Commission to endeavour to complete its work within three years of the closing date for filing claims. In light of requests received from both parties, the Commission, in February 2003, adjusted its schedule of future filings and hearings to take account of other proceedings involving the parties and of the breadth and complexity of the work remaining to be done.

9. The Commission held hearings on the parties' central front claims at the Peace Palace in November 2003. The Commission rendered its partial awards on the parties' central front claims (Eritrea's claims 2, 4, 6, 7, 8 and 22 and Ethiopia's claim 2) on 28 April 2004.

10. The Commission's hearings on the parties' civilians claims were held at the Peace Palace in March 2004. The Commission's partial awards on the parties' civilians claims (Eritrea's claims 15, 16, 23 and 27 to 32 and Ethiopia's claim 5) were released on 17 December 2004.

11. The Commission held hearings on the parties' remaining liability claims at the Peace Palace in April 2005. The Commission rendered the following awards on 19 December 2005:

Western front, aerial bombardment and related claims (Eritrea's claims 1, 3, 5, 9 to 13, 14, 21, 25 and 26)
Western and eastern fronts (Ethiopia's claims 1 and 3)
Diplomatic claim (Eritrea's claim 20)
Diplomatic claim (Ethiopia's claim 8)
Pensions (Eritrea's claims 15, 19 and 23)
Loss of property in Ethiopia owned by non-residents (Eritrea's claim 24)
Ports (Ethiopia's claim 6)
Economic loss throughout Ethiopia (Ethiopia's claim 7)
Jus ad bellum (Ethiopia's claims 1 to 8)

The Commission also released its decision No. 6 regarding the withdrawal of Eritrea's claim 18.

12. Beginning in the summer of 2005, the Commission and the parties consulted regarding the possibility of further proceedings following completion of the merits of the parties' claims. The parties decided to proceed despite concerns aired by the Commission that a damages phase involving the precise assessment of the extent of injuries allegedly suffered by large numbers of persons, entities and government bodies would require years of additional difficult, burdensome and expensive proceedings.

13. The Commission considered a proposal by Ethiopia that, in lieu of further legal proceedings on damages, the Commission should be converted into a mechanism working to increase the flow of relief and development funds from international donors to alleviate the consequences of the war in both countries. In the absence of agreement by the parties, and in the face of obvious difficulties in implementation, this proposal to change the mandate of the Commission was not

pursued, and it was not possible to conclude the proceedings without a damages phase.

14. The Commission considered the options for proceedings to assess damages, and took into account its responsibilities under article 5(12) of the December 2000 Agreement to endeavour to complete its work within three years of the closing date for filing claims, which time frame was extended in February 2003 in the light of both parties' requests. The Commission was also mindful of the complexity and cost of the proceedings to date and of the significant financial and other burdens they imposed on both parties (all of the costs of the proceedings, including the costs of both parties' legal teams, were borne by the parties themselves).

15. Accordingly the Commission issued an order on 13 April 2006 directing the parties to proceed with a "fast-track" damages phase, involving a limited number of filings of legal pleadings and evidence and a tight schedule of hearings. The order also indicated the Commission's recurring concern that proceeds accruing in the damages phase would be used by the parties to assist civilian victims of the conflict.

16. The Commission held the first round of hearings in the damages phase at the Peace Palace in April 2007. The Commission issued its decision No. 7 "Guidance regarding *jus ad bellum* liability" and decision No. 8 "Relief to war victims" on 27 July 2007.

17. The Commission held the second round of hearings in the damages phase at the Peace Palace in May 2008, and rendered its final awards on damages on 17 August 2009. The Commission awarded Eritrea in respect of its own claims the total monetary compensation of 161,455,000 United States dollars, and an additional $2,065,865 in respect of claims presented on behalf of individual Eritrean claimants. The Commission awarded Ethiopia in respect of its claims the total monetary compensation of $174,036,520.

18. The Commission noted in these final awards on damages that the armed conflict between the two parties caused serious injury and damage to the people and infrastructure of these two countries. While the compensation awarded to each party is substantial, the Commission recognized that it is probably much less than each party believes is its due. The Commission stated: "Its awards probably do not reflect the totality of damages that either party suffered in violation of international law. Instead, they reflect the damages that could be established with sufficient certainty through the available evidence, in the context of complex international legal proceedings carried out by the parties with modest resources and under necessary pressures of time".

19. In considering the claims of each party the Commission took note that these countries are among the poorest in the world; that large damages awards might exceed the capacity of the responsible State to pay or result in serious injury to its population if such damages were paid; and that the obligations of both parties under the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, to which both Eritrea and Ethiopia are parties, which provide in common article 1(2) that "[i]n no case may a people be deprived of its own means of subsistence". However, in the circumstances, the Commission concluded that it need not decide the question of possible capping of the awards in the light of these factors.

20. With the issuance of its final awards on damages, the Commission has completed its mandate. The Commission's partial and final awards on liability and damages, as well as its decisions and other relevant information, are available on the website of the Permanent Court of Arbitration (www.pca-cpa.org).

21. The Commission records its appreciation to both parties and their legal teams for their goodwill, cooperation, professionalism and efficiency throughout these lengthy proceedings. The Commission also expresses its thanks to the staff of the Permanent Court of Arbitration, and in particular to Belinda Macmahon, the Commission's Registrar since 2004, for providing highly professional and efficient support.

22. With the completion of its mandate, the Commission reiterates its confidence that the parties will ensure that compensation they may receive in respect of their claims will be used to provide relief to their civilian populations injured in the war. The Commission has sought throughout this process to resolve many difficult issues between the parties fairly and in accordance with international law. It hopes that these efforts will contribute to the eventual establishment of a durable and mutually beneficial peace between them.

(*Signed*) Hans **van Houtte**
President, Eritrea-Ethiopia Claims Commission

20 November 2009